

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

v.

File No. 1:11-CR-287

REED STANLEY BERRY,

Defendant.

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Change of Plea Hearing

Before

THE HONORABLE ROBERT HOLMES BELL  
United States District Judge  
December 12, 2011

APPEARANCES

HAGEN W. FRANK  
Assistant U.S. Attorney  
P.O. Box 208  
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Attorney for Plaintiff

ELIAS MUAWAD  
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Suite 209  
Bloomfield Hills, MI 48304  
Attorney for Defendant

Kevin W. Gaugier, CSR-3065  
U.S. District Court Reporter

Grand Rapids, Michigan

December 12, 2011

1:33 p.m.

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P R O C E E D I N G S

THE COURT: This is the matter of United States v. Reed Stanley Berry. This is the Court's docket number 11-CR-287. Mr. Frank represents the United States Attorney's Office. Mr. Muawad represents Mr. Berry as retained counsel in this matter.

Counsel, I have a plea agreement before me of some eight pages, and the last page of that plea agreement indicates that you are Mr. Berry's attorney, you've carefully discussed every part of this plea agreement with your client, and you've fully advised him of his rights and defenses and the sentencing provisions and the consequences of entering into this agreement. Is that correct?

MR. MUAWAD: That is correct.

THE COURT: And you indicate to your knowledge your client's decision to enter into this agreement is an informed and voluntary one. Is that right?

MR. MUAWAD: Yes.

THE COURT: And that it calls for a plea to be

1       tendered to the outstanding indictment?

2               MR. MUAWAD:   Yes.

3               THE COURT:   If you and your client could approach  
4       the podium, please.

5               You are Reed Stanley Berry?

6               DEFENDANT BERRY:   Yes, sir.

7               THE COURT:   If you'd please raise your right hand.  
8       (Defendant Berry was sworn by the Court.)

9               THE COURT:   Okay.   Do you understand the importance  
10       of truthfulness to these proceedings and the penalty of  
11       perjury if you should not tell the truth?

12              DEFENDANT BERRY:   Yes, sir.

13              THE COURT:   Is there anything mentally or physically  
14       that would in any way interfere with your ability to  
15       participate in these proceedings this afternoon?

16              DEFENDANT BERRY:   No, sir.

17              THE COURT:   Is this your signature on the last page  
18       of this plea agreement?

19              DEFENDANT BERRY:   The last page, yes, sir.

20              THE COURT:   Now, above your signature it says that  
21       you've read this agreement and carefully discussed it with  
22       your attorney and you understand this agreement and agree to  
23       its terms.   Is that correct?

24              DEFENDANT BERRY:   Yes, sir.

25              THE COURT:   And in Paragraph 1 of this plea

1 agreement it indicates that you intend to enter a guilty plea  
2 to this indictment. Is that right?

3 DEFENDANT BERRY: Yes, sir.

4 THE COURT: It indicates your attorney has advised  
5 you of your rights and possible defenses, the sentencing  
6 provisions, and the consequences of entering into this plea?

7 DEFENDANT BERRY: Yes, sir.

8 THE COURT: And that no other promises or any  
9 inducements or any other agreements have been made other than  
10 those contained within this plea agreement. Do you understand  
11 that?

12 DEFENDANT BERRY: Yes, sir.

13 THE COURT: And that no one has threatened you in  
14 any way; is that right?

15 DEFENDANT BERRY: No, sir.

16 THE COURT: And that you are satisfied with your  
17 lawyer and his representations; is that right?

18 DEFENDANT BERRY: Yes, sir.

19 THE COURT: Have you had enough opportunity or an  
20 ample opportunity to thoroughly discuss this matter such that  
21 you feel prepared today to enter a plea?

22 DEFENDANT BERRY: Yes, sir.

23 THE COURT: Do you understand that you have the  
24 right to be represented by a lawyer throughout any proceedings  
25 that are held in this matter?

1           DEFENDANT BERRY: Yes, sir.

2           THE COURT: This indictment alleges that on or about  
3           September 9th of 2011, some three months ago, approximately,  
4           in Berrien County here in the southwest corner of the Western  
5           District of Michigan, that you did intentionally use a deadly  
6           and/or dangerous weapon, being an automobile, to forcibly  
7           assault, impede, intimidate or interfere with an officer or  
8           employee of the United States, being Federal Bureau of  
9           Investigation Special Agent Samuel J. Moore, while the officer  
10          was engaged in and on account of the performance of his  
11          official duties.

12          DEFENDANT BERRY: Yes, sir.

13          THE COURT: You understand that?

14          DEFENDANT BERRY: Yes, I do. Yes, sir.

15          THE COURT: What plea would you wish to enter to  
16          that charge, that of guilty or not guilty?

17          DEFENDANT BERRY: Guilty.

18          THE COURT: By entering a guilty plea do you  
19          understand that you would give up a trial or waive the right  
20          to a trial before a judge or a jury in this courtroom?

21          DEFENDANT BERRY: Yes, sir.

22          THE COURT: Do you understand that you would give up  
23          the right to question the government's witnesses at a trial,  
24          that you'd give up the right to subpoena and call witnesses on  
25          your own behalf and present evidence on your own behalf,

1 including your right to testify on your own behalf?

2 DEFENDANT BERRY: Yes, sir.

3 THE COURT: Do you understand that no one could ever  
4 force you to give testimony or comment if you did not give  
5 testimony at trial?

6 DEFENDANT BERRY: Yes, sir.

7 THE COURT: Do you understand that a guilty plea  
8 that you might tender to this Court at this time means then  
9 that you are forever giving up the right to a trial, and a  
10 guilty plea, if accepted, would result in your conviction and  
11 eventually in a sentence this Court would be required to  
12 impose?

13 DEFENDANT BERRY: Yes, sir.

14 THE COURT: Any questions about these procedures?

15 DEFENDANT BERRY: No, sir.

16 THE COURT: Do you have any questions about this  
17 charge that I have read to you?

18 DEFENDANT BERRY: No, sir.

19 THE COURT: Do you understand that this charge  
20 carries a maximum penalty of up to 20 years and/or up to a  
21 \$250,000 fine followed by a period of supervised release of up  
22 to three years and a \$100 special assessment that this Court  
23 would be required to impose; and in addition to these maximum  
24 penalties, this Court would be required to review certain  
25 sentence guidelines that are concerning the presumptive

1 sentence that this Court might employ in this matter?

2 DEFENDANT BERRY: Yes, sir.

3 THE COURT: Are you a United States citizen?

4 DEFENDANT BERRY: Yes, sir.

5 THE COURT: Has anyone as it pertains to this plea  
6 made any promises other than the plea agreement and other than  
7 the maximum penalties here that have been outlined to you?

8 DEFENDANT BERRY: No, sir.

9 THE COURT: Anyone made any promises of leniency or  
10 implied or predicted what the sentence of this Court might  
11 be?

12 DEFENDANT BERRY: No, sir.

13 THE COURT: Is your plea undertaken freely and  
14 voluntarily this afternoon?

15 DEFENDANT BERRY: Yes, sir.

16 THE COURT: Tell me in your own words what you did  
17 that you believe makes you guilty.

18 DEFENDANT BERRY: I'm pleading guilty to forcibly  
19 using my car to try to hit an agent of the federal  
20 government's own vehicle, and that's what I'm pleading guilty  
21 to.

22 THE COURT: Did you understand or have reason to  
23 believe that the car that you were attempting to hit had a law  
24 enforcement officer in it?

25 DEFENDANT BERRY: Yes, sir.

1 THE COURT: Obviously it must have been unsuccessful  
2 in terms of hitting him. Did you come reasonably close to  
3 being -- doing what you intended?

4 DEFENDANT BERRY: No, sir.

5 THE COURT: What I mean is you were using your  
6 vehicle to try and strike another vehicle?

7 DEFENDANT BERRY: Yeah. Yes, sir.

8 THE COURT: Did you come within inches or feet of  
9 that vehicle in some way or another?

10 DEFENDANT BERRY: It would be more feet than inches.

11 THE COURT: Right. What I mean is did you close a  
12 distance between you and the other vehicle in an attempt to  
13 strike that vehicle?

14 MR. MUAWAD: Do you understand the question?

15 DEFENDANT BERRY: Yeah.

16 MR. MUAWAD: When you were going in reverse, you  
17 were getting closer to the agent in his car, so you were  
18 closing the distance in between your car and his car. Would  
19 you agree with that?

20 DEFENDANT BERRY: Oh, yes.

21 THE COURT: Okay. Thank you.

22 MR. MUAWAD: Sorry, Judge.

23 THE COURT: And where did this occur, sir?

24 DEFENDANT BERRY: In the city of St. Joseph,  
25 Michigan, Berrien County.



1 THE COURT: Okay. Did you know or have reason to  
2 believe that that officer was acting as an officer at the time  
3 as opposed to that officer going to get groceries and going to  
4 a ballgame or something?

5 DEFENDANT BERRY: Yes, sir.

6 THE COURT: Okay. When was that, do you recall?

7 MR. MUAWAD: Remember the date?

8 DEFENDANT BERRY: No. September 9th, 2011.

9 THE COURT: Okay. What was your purpose -- last  
10 question. What was your purpose in attempting to strike this  
11 vehicle?

12 DEFENDANT BERRY: I'm pleading guilty to everything  
13 that's inside this plea agreement and --

14 THE COURT: Well, it says here --

15 DEFENDANT BERRY: It doesn't state --

16 MR. MUAWAD: Hold on. Hold on.

17 THE COURT: It says here that you used the vehicle  
18 to forcibly assault, impede, intimidate and interfere with an  
19 officer. Is that what you intended to do?

20 DEFENDANT BERRY: Yeah. That's what I -- I didn't  
21 know the right way I should have worded it, so --

22 THE COURT: And I didn't word the question very  
23 clearly. But it was your intention to interfere or impede  
24 him?

25 DEFENDANT BERRY: Yes.

1 THE COURT: Okay. Did you know who that person was  
2 that you were -- that was driving that vehicle?

3 MR. MUAWAD: Did you know he was an agent or --

4 THE COURT: Did you know that person personally?

5 DEFENDANT BERRY: No, sir.

6 THE COURT: Okay.

7 DEFENDANT BERRY: I never seen him before in my  
8 life.

9 THE COURT: Had you had difficulty with law  
10 enforcement before you did this?

11 DEFENDANT BERRY: I've been -- I've been in trouble  
12 before, not with these particular people per se, but with the  
13 state. When I was younger I had been caught with, you know,  
14 charged with possession of marijuana, and then I've been to  
15 prison for possession of marijuana. So I have been in trouble  
16 in the past.

17 THE COURT: Okay. Mr. Frank, additional questions  
18 you'd wish to ask to establish the factual basis?

19 MR. FRANK: Just regarding the stipulation of fact  
20 that's in the plea agreement, Your Honor.

21 Mr. Berry, your plea agreement has a stipulation of  
22 fact that has a bunch of factual assertions in it. Before you  
23 signed your agreement, did you read that?

24 DEFENDANT BERRY: Yes, sir.

25 MR. FRANK: Are all those facts correct?

1           DEFENDANT BERRY: Yes, sir.

2           MR. FRANK: Nothing else, Your Honor, thank you.

3           THE COURT: You're talking about Paragraph 5?

4           MR. FRANK: Yes, Your Honor, that's correct, on  
5 Page -- starts on Page 3 of the agreement.

6           THE COURT: Okay. Mr. Muawad, any additional  
7 questions you believe should be asked?

8           MR. MUAWAD: No, Your Honor, thank you. No.

9           THE COURT: The following are the findings of this  
10 Court: that this plea appears to be freely and voluntarily  
11 entered without promises of leniency or coercion. The Court  
12 finds this indictment as it now stands factually accurate, and  
13 together with the stipulations and testimony taken under oath,  
14 this Court finds the defendant is actually guilty and he  
15 hereby stands convicted. The plea agreement this Court finds  
16 is accepted, and a presentence report should be ordered to be  
17 prepared preparatory for sentencing.

18           Mr. Muawad, I have a tentative sentencing date in  
19 this case of April 10th, 2012, first thing in the afternoon at  
20 1:15 if that would suit your schedule.

21           MR. MUAWAD: Judge, I don't see any problem with  
22 that date at all. Obviously if something arises I would let  
23 you know, but that's fine, April 10th.

24           THE COURT: Okay. Mr. Frank, is that agreeable with  
25 you?

1 MR. FRANK: That's fine, sir.

2 THE COURT: It's my understanding that a detention  
3 order was entered --

4 MR. MUAWAD: Right.

5 THE COURT: -- by the magistrate judge; is that  
6 right?

7 MR. MUAWAD: Yes.

8 THE COURT: Very well. That detention order will be  
9 continued, then, in absence of proof to the contrary, and that  
10 will be all until we see one another on April the 10th and  
11 until we start the process of a presentence report.

12 MR. MUAWAD: Have a good Christmas and New Year's.

13 THE COURT: Thank you. You too. Thank you.

14 (Proceedings concluded at 1:47 p.m.)  
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CERTIFICATE OF REPORTER

I, Kevin W. Gaugier, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript was prepared by me.

/s/ Kevin W. Gaugier

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